IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.:	09/895,457	§	
Filed:	June 29, 2001	§	
Inventors:		§	
Nobuyoshi Morimoto		§	Examiner: Nguyen, Nga B
		§	Group/Art Unit: 3692
		§	Atty. Dkt. No: 5596-00301
		§	
Title:	System and Method for Negotiating Improved Terms for Products and Services Being Purchased through the Internet	§	

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicants request review of the rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a notice of appeal. Claims 1-44 are pending in the application. Please note that for brevity, only the primary arguments directed to the independent claims are presented, and that additional arguments, e.g., directed to the subject matter of the dependent claims, will be presented if and when the case proceeds to Appeal.

The Examiner rejected claims 1-44 under 35 U.S.C. § 103(a) as being unpatentable over Lustig et al. (U.S. Publication 2002/0002531) (hereinafter "Lustig") in view of Seymour et al. (U.S. Patent 6,871,190) (hereinafter "Seymour"). **Regarding claims 1, 14 and 28, Lustig in view of Seymour fails to teach or suggest receiving information indicating one or more default purchasing standards for a purchaser using an Internet web site to purchase a product or service; and, in response to the purchaser accepting a separate offer for negotiating improved terms within a specified time, rejecting one or more other offers, *based on the default purchasing standards*.**

The Examiner cites paragraphs [0070-0073] of Lustig and refers to the fact that in Lustig's system a user may connect to a publisher's web site to submit an original offer. The Examiner also relies on the fact that Lustig's system accepts the better of the user's original offer and other offers. Thus, the Examiner's position appears to be that a user selecting an original offer in Lustig's system equates to receiving information indicating default purchasing standards for a purchaser using an Internet web site to

purchase a product or service, as recited in Applicants' claims. **However, Applicant's claim 1 draws a distinction between "detecting an issuance of a commitment to purchase *with associated terms*" and "receiving information indicating one or more *default purchasing standards*".** Thus, the user-selected offer to purchase an item in Lustig is not the same as receiving *default purchasing standards* that are distinct from terms associated with a commitment to purchase a product or service.

Furthermore, in the cited passage, Lustig teaches that his system provides a web page including a plurality offers to the user for selection. Presenting plurality of purchase offers from which a user selects an offer "in which the user is interested" (Lustig, para. [0070]) does not equate to, nor teach or suggest, even if combined with Seymour, *receiving information indicating default purchasing standards*, as recited in claim 1. Receiving information indicating that a user is *interested* in a *particular* offer, as taught by Lustig, is not the same as receiving information indicating *default purchasing standards* which are used in rejecting other offers that arise from the purchaser accepting a separate offer for negotiating improved terms within a specified time. The Examiner has erroneously conflated user selection of a particular offer with receiving *default purchasing standards* that are used in rejecting other offers that arise from the purchaser accepting a separate offer for negotiating improved terms within a specified time. An offer is clearly not the same as default purchasing standards. No one of ordinary skill in the art would conflate the initial offer in Lustig with default purchasing standards as recited in Applicant's claim.

Lustig even in light of Seymour does not teach that a user selecting an offer of interest has anything to do with default purchasing standards used in rejecting other offers that arise from the purchaser accepting a separate offer for negotiating improved terms within a specified time. Nor does Lustig, even in view of Seymour, teach that user selected offers are used as default purchasing standards in rejecting other offers that arise from the purchaser accepting a separate offer for negotiating improved terms. Therefore, Lustig and Seymour, whether considered singly or in combination, clearly fail to teach or suggest receiving information indicating one or more default purchasing standards for a purchaser using an Internet web site to purchase a product or service; and, in response to the purchaser accepting a separate offer for negotiating improved terms within a specified time, rejecting one or more other offers, based on the default purchasing standards.

Regarding claims 29, Lustig in view of Seymour fail to teach or suggest that if a better price is found before the predetermined amount of time expires, purchasing the particular item or service for the purchaser at the better price and *charging the purchaser a new price between the particular price and the better price*. **The Examiner does not provide a proper rejection of claim 29.** The Examiner merely

states that claims "29 – 40 contain similar limitations found in claims 1-13 above, therefore [claims 29 – 40] are rejected by the same rational." **However, none of claims 1-13, nor the rejection of those claims, mentions anything regarding purchasing an item or service for a purchaser at a better price and charging the purchaser a new price between the particular price and the better price.** The Examiner has improperly failed to consider the specific limitations of Appellant' claim. **Therefore, no *prima facie* rejection has been stated in regard to claims 29-40.**

As noted above, Lustig in view of Seymour fails to teach or suggest purchasing the particular item or service for the purchaser at the better price and **charging the purchaser a new price between the particular price and the better price.** Lustig's system teaches only that the best offer found is accepted on behalf of the user. Nowhere does Lustig mention purchasing an item or service at a better price and charging the purchaser a new price between the particular price and the better price. Similarly, Seymour is silent regarding this limitation of Appellant's claim. Seymour's automated auction system allows buyers and sellers to configured specific auction strategies that are implemented by bidder and seller agents. Nothing in Seymour's teaches or suggests purchasing the particular item or service for the purchaser at the better price and charging the purchaser a new price between the particular price and the better price. Additionally, there is nothing about the Examiner's combination of Lustig and Seymour that teaches or suggest this limitation of Appellant's claim.

In her response to arguments, the Examiner, without citing any portion of Lustig or Seymour in support, refers to the fact that Lustig's system may accept a better offer (than the user's originally selected offer) on behalf of the user. The Examiner then asserts, "Lustig obviously teaches purchasing the particular item [or] service for the purchaser that [at] the better price and charging the purchaser a new price between the particular price and the better." **However, the Examiner's assertion is completely unsupported by the actual teachings of the reference.** Nowhere does Lustig, even if viewed in light of Seymour, teach anything regarding purchasing the item for the purchaser at the better price and charging the purchaser a new price between the particular price and the better price. In fact, the very wording used by Lustig seems to teach away from charging the user a new price between price of Lustig's original offer and the price of a better offer. As admitted by the Examiner, Lustig teaches that his system, "accepts the better offer on behalf of the User" (para. 9, 15, 25, 19 and 81). Accepting a better offer *on behalf of the user* clearly implies that the better offer, and hence the cost or price of the better offer, is accepted by Lustig's system for the user. In contrast, Applicants' claim specifically recites charging the purchaser a new price between the particular price and the better price. Therefore, Lustig's system does not

necessarily or inherently include or even suggest charging the user a price **between the original price and the better price**. Similar remarks also apply to claims 40, 41, 42, and 44.

In further regard to claims 41 and 42, Lustig in view of Seymour fails to teach or suggest intercepting a message over the Internet to delay the purchase for a predetermined amount of time, wherein the message includes commitment to purchase information for the purchaser regarding the item or service. The Examiner asserts that intercepting a message over the Internet is "well known in the art" and that it would have been obvious "to modify Lustig's [system] in combining (sic) with Seymour … for the purpose of providing more efficiency and convenient in communication over the Internet." However, the Examiner's assertion that intercepting a message over the Internet, where the message includes commitment to purchase is well known is merely the Examiner's opinion. **The Examiner hasn't cited any prior art that supports the Examiner's contention that it is obvious to intercept a message over the Internet where the message includes commitment to purchase information.** M.P.E.P. 2144.03A clearly states, "It is never appropriate to rely solely on 'common knowledge' in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based." That is precisely the case here. The Examiner has merely stated that it is "well known in the art" to intercept a message over the Internet where the message includes commit to purchase information. The Examiner's assertion is the "principal evidence" upon which the rejection of Applicant's claim is based.

Additionally, the Examiner's rejection does not take into account the full and complete language of Applicants' claim. The Examiner's rejection does not address the fact that claim 41 recites intercepting a message over the Internet *to delay the purchase for a predetermined amount of time.* Lustig and Seymour, as admitted by the Examiner do not mention anything regarding intercepting a message over the Internet to delay the purchase for a predetermined amount of time. The Examiner does not cite any prior art that teaches or suggests intercepting a message to delay a purchase for a predetermined amount of time. The Examiner's combination of cited art thus fails to teach or suggest all claim limitations. M.P.EP. §2143.03 clearly states that all claim limitations must be taught or suggested by the prior art to establish *prima facie* obviousness.

Additionally, the Examiner has failed to provide a proper reason for modifying Lustig in view of Seymour. The Examiner has stated a general goal of improving the efficiency of Internet communication. The reason given by the Examiner would actually teach away from Applicant's claimed invention. One seeking to "provide more efficiency and convenience in Internet communication" would not be motivated to modify the combination of Lustig and Seymour to include intercepting a message over the Internet to

delay a purchase for a predetermined amount of time, where the message includes commitment to purchase information.

Further regarding claim 44, Lustig in view of Seymour fails to teach or suggest a plurality of broker-agent programs performing multiple searches in parallel for the better price. The Examiner states, "retrieving and comparing a plurality of available offers to determine the better offer is considered equivalent to performing multiple searches in parallel for better price", referring to Lustig's matching programming organizing, storing and retrieving a plurality of offers from a matching database. Applicants strongly disagree. Lustig, even if combined with Seymour, does not teach a plurality of broker-agent programs performing multiple searches in parallel for the better price. The Examiner even states that Lustig's matching program "organizes, stores, and retrieves a plurality of available offers *from a matching database*" (italics added). Thus, **as admitted by the Examiner**, Lustig teaches retrieving other offers from a database, not a plurality of broker-agent programs performing multiple searches in parallel. Offers may be obtained in order to fill a database in numerous ways. The Examiner's contention that retrieving a plurality of offers from a database is "equivalent to" performing multiple searches in parallel is simply incorrect and is clearly unsupported by the cited art.

In light of the foregoing remarks, Applicants submit the application is in condition for allowance, and notice to that effect is respectfully requested. If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above referenced application from becoming abandoned, Applicant hereby petitions for such an extension. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert & Goetzel PC Deposit Account No. 501505/5596-00301/RCK.

Respectfully submitted,

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